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MAY - 7 2018

CLERK US DISTRICT COURT  
DISTRICT OF NEVADA

BY: \_\_\_\_\_ DEPUTY

**FOR THE DISTRICT OF NEVADA**

## EMBEZZLEMENT

a. Plaintiff is a resident of Nevada.

- 1
- 2 b. Defendant Uber Technologies is a Delaware Corporation with its Principle Place
- 3 of Business in California.

4 **JURISDICTION AND VENUE**

5 Plaintiff seeks to enforce his rights under the Fair Labor Standard Acts and the

6 Occupational Safety and Hazards Act.

- 7 i. This court has subject matter jurisdiction under 28 U.S.C. § 1331(federal question
- 8 jurisdiction) And 28 U.S.C. § 1367 (supplemental jurisdiction over state law
- 9 claims).
- 10 ii. This court has personal jurisdiction over all parties.
- 11 iii. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). All events set
- 12 out below occurred within the District of Nevada. The contract between
- 13 Plaintiff and Defendant was entered in Nevada.
- 14

15 **I. MATERIAL FACTS**

- 16 1. Defendant is an unregulated taxi operator.
- 17
- 18 2. Plaintiff is a former taxi driver for Defendant. In or around January 2016, Plaintiff
- 19 applied to drive for Defendant Uber.
- 20
- 21 3. Defendant induced Plaintiff to apply to drive under Defendant's umbrella by
- 22 advertising that drivers can make \$35 per hour driving under Defendant's
- 23 umbrella. Defendant continue to make this assertion even to this day.
- 24
- 25 4. At the time of the application, Plaintiff was a registered owner of a 1999 Chevy
- 26 Tahoe and a 1999 Mercedes Benz. Defendant required prospective drivers to
- 27 have a 2006 or newer vehicle. Because none of Plaintiff's car was 2006 or newer,
- 28

1  
2 have a 2006 or newer vehicle. Because none of Plaintiff's car was 2006 or newer,  
3 none of Plaintiff's cars could qualify. Plaintiff informed defendant that he intends  
4 to purchase a vehicle upon being approved to drive by defendant.

- 5  
6 5. Defendant only approved those who pass background check to drive under its  
7 umbrella. As a result of Plaintiff's application, Defendant initiated a background  
8 check on Plaintiff. A week or two after initiating background check, Plaintiff  
9 visited the Defendant's office to see whether background has been completed.  
10 Plaintiff was given a TNC sticker and an Uber emblem and asked to complete the  
11 tax information for my 1099 and set up a direct deposit for my pay. Plaintiff did  
12 as he was instructed. Part of that process included agreeing to an arbitration.
- 13  
14 6. Plaintiff visited the Uber Partner's office on January 6, 2016 and was advised that  
15 the only thing remaining was for Plaintiff to register a vehicle before his account  
16 could be activated. Again, Plaintiff told Defendant that he is going to buy a new  
17 car.
- 18  
19 7. Plaintiff was referred by Defendant to ABC 6825 Redwood St, Las Vegas, NV  
20 89118. Plaintiff was told that ABC was working with Defendant to get drivers on  
21 the road. Plaintiff went to ABC Hyundai as instructed. However, the cheapest  
22 vehicle Plaintiff could find at ABC was a sedan selling for \$24,000.
- 23  
24 8. Plaintiff decided to look elsewhere. That same day, Plaintiff went and bought a  
25 2015 Kia Sorento from Hertz Car Sales at a cost of \$17,000. After paying taxes and  
26 fees, Plaintiff was on the hook for \$21,000.00.
- 27  
28 9. On and around January 7, 2016, Plaintiff visited Uber Office where the car was  
inspected for safety by Defendant's mechanics. The car passed safety and was

1  
2 approved for Uber services. That day, Plaintiff got two more Uber emblems and  
3 another TNC sticker.  
4

5 10. On and around January 12, Plaintiff received a post adverse notice from Checkr,  
6 Inc. located at 2505 Mariposa Street, San Francisco, CA 94110. This was the  
7 company contracted by Defendant to conduct background check on prospective  
8 drivers.

9 11. Plaintiff had a 2010 conviction for reckless driving resulting from a DUI arrest in  
10 late 2009. This information was available on DMV Printout.  
11

12 12. Plaintiff immediately wrote both Checkr and Uber asking them to reconsider  
13 because Plaintiff had relied to his detriment with Defendant's action of sending  
14 Plaintiff to a dealership to obtain a qualifying vehicle as an indication that he was  
15 good to go.  
16

17 13. Plaintiff talked to Sherelle (Checkr) via email and Desiree (Uber Support) via email  
18 and phone. Plaintiff told them that he had already incurred a \$21,000 car note in  
19 reliance with Uber's actions and communication with Plaintiff.

20 14. On Thu 21 Jan 2016, Plaintiff received an email from Uber declining his  
21 application to drive for Uber. As a result, Plaintiff's offer to drive for Defendant  
22 was rejected by Defendant and therefore no contract ensued.  
23

24 15. Again, Plaintiff contacted Sherelle and Desiree. Plaintiff also visited the Uber's  
25 office in Las Vegas and asked them to reconsider. The purpose for which Plaintiff  
26 acquired the car was frustrated by Defendant's rejection of Plaintiff's offer.  
27  
28

1  
2 16. Again, Plaintiff visited Defendant's office on Fort Apache to ask Defendant to  
3 reconsider. Defendant refused to reconsider. Instead, Plaintiff was asked to  
4 reapply if he thought something was wrong.  
5

6 17. In April 2016, Plaintiff reapplied to drive for Defendant. On Apr 5, 2016, Plaintiff  
7 received an email that Checkr was again running his background check.  
8

9 18. Before this background was completed, Plaintiff contacted Ally Finance, the bank  
10 that financed the Kia Sorento and informed them that he may have to return the  
11 vehicle because the purpose for which he had bought the car has been  
12 frustrated. When purchasing the car, Plaintiff had notified Hertz's car sales that he  
13 needed the car to drive for Uber. Plaintiff was given a toll-free number by the Ally  
14 agent to call so that Ally can come and pick up the car but was notified that it was  
15 going to affect Plaintiff's credit. As Plaintiff weighed whether to call the number  
16 and ruin his credit, Checkr completed Plaintiff's second background check. The  
17 same information that came out of the prior background check came out (the  
18 2010 conviction for Reckless Driving).  
19

20 19. Plaintiff received a text message from Defendant. The message wanted to know if  
21 I have a TNC sticker. Plaintiff replied in the affirmative. Another message came. It  
22 instructed Plaintiff to take the picture of the TNC sticker and send it as a reply to  
23 the text. Plaintiff did as instructed.  
24

25 20. On Apr 7, 2016, Plaintiff received an email from Defendant. The email exclaimed,  
26 "Your background check has cleared!" In that email, Plaintiff was required to set  
27 up his tax preferences and link his bank account. Because Plaintiff had already  
28 set up his tax preferences and linked his bank account when Defendant declined  
to enter into contract with him (back in January 2016). Plaintiff did not have to do

1  
2 anything. Signing into his account indicated that everything was set to go. Thus,  
3 no new arbitration clause was filled by Plaintiff.  
4

5 21. On or around April 8, 2016 Plaintiff was approved to drive for Uber. In reliance  
6 with that activation, Plaintiff decided to keep the Kia Sorento.

7 22. Defendant and Plaintiff entered into a taxi contract. The terms of that contract  
8 were that Plaintiff would receive 75% of the fares and Defendant would Keep  
9 25% of the fares. This arrangement was quickly changed by defendants after  
10 Plaintiff started driving for Defendant. A few weeks after starting to drive for  
11 Uber, Plaintiff tried to log into Uber app. A message came indicating that before  
12 Plaintiff can log in, Plaintiff must accept the change in remuneration. Fare split  
13 was changed from 75%:25% to 65%:35%.  
14

15 23. Each change in the contract be it for percentages, fares increases, or decreases  
16 has always been done been done through messages in the app. when the driver  
17 is logging into the app. to get to work. Each change has occurred without any  
18 consideration.

19 24. Plaintiff drove for Uber all of 2016 and all of 2017. All that time, Plaintiff  
20 maintained a rating of 4.9 out of 5.  
21

22 25. During that time, Plaintiff could only carry passengers assigned by Defendant. It  
23 was made clear that any driver who carries a passenger outside the platform will  
24 be deactivated. As such Plaintiff could not pick up flags.  
25

26 26. Defendant had sole discretion determine how much the customer will pay,  
27 Defendant could change fares at his discretion  
28

1  
2 27. Defendant maintained a disciplinary policy in the name of “things a driver could  
3 do to get excluded”.

4  
5 28. Defendant had sole discretion to determine how the money generated will be  
6 split. Defendant could void the contract at his discretion.

7  
8 29. Defendant also punishes drivers for misconducts such as, being rude to a non-  
9 satisfactory job performance.

10 30. Defendant controls prices and monitors Drivers’ performance like a traditional  
11 employer.

12  
13 31. That Defendant had misclassified Plaintiff as an independent contractor and at  
14 the same time Defendant divested all economic opportunities for Plaintiff.

15  
16 32. When determining amount that a driver gets, Defendant Uber calculates two  
17 fares for each ride — one charged to the passenger and a cheaper one used to  
18 determine the driver's pay. This has been acknowledged by Defendant’s  
19 spokesperson as quoted by Los Angeles Times. According to LA Times,  
20 spokesperson “acknowledged that the calculations used to determine what  
21 passengers are charged and what drivers are paid can differ.”<sup>1</sup> This goes against  
22  
23  
24  
25

26 <sup>1</sup> Lawsuit accuses Uber of ripping off drivers, paying them smaller fares than what passengers pay,  
27 available at, <http://www.latimes.com/local/lanow/la-me-uber-drivers-lawsuit-20170429-story.html> (last visited  
28 4/10/18).

1  
2 Uber-Driver fare percentage splits as set by Defendant at the time of Plaintiff's  
3 application.  
4

5 33. In a scheme meant to conceal tips given to the driver via Defendant's app.,  
6 Defendant ensures that immediately after the ride, only the fare, minus the tips  
7 show up on the driver's app. Hours or days later, the tips show up on the app. In  
8 at least two occasions, passenger has shown the driver as she input the tip. For a  
9 Five Dollar tip, Plaintiff got a two dollars tip from Defendant. Defendant has been  
10 deducting drivers tips auto-collected from passengers under their rider  
11 agreement to further enrich itself.  
12  
13

14 34. Defendant only counts driving hours as hours when a driver has a passenger in  
15 direct violation of Department of Transportation's regulations. Even when  
16 Plaintiff is assigned a ride, the time taken to get to the passenger is not counted  
17 as on-duty-time.  
18  
19

20 35. Plaintiff never got a traffic ticket or got into an accident during the time he drove  
21 for Defendant.  
22

23 36. On or around February 5, 2018, Plaintiff took the Kia Sorento for the annual  
24 safety check at Defendant's office at 1022 W Sunset Rd Ste 2 Sunset Plaza  
25 Henderson, NV 89014. Plaintiff's vehicle did not pass safety. He was instructed to  
26 install new tires and fix the airbag light on the dashboard. During this visit, also  
27 wanted to know whether as an independent contractor, Plaintiff can carry an  
28 Uber customer in conjunction with a Lyft customer (a pool ride).



1  
2 37. Pool rides exists in Uber but only Defendant, not the driver, can put together a  
3 pool of riders. A pool ride occurs when Uber adds more passenger pick-ups in one  
4 ride. When that happens, a driver is paid one full fare for the first ride and \$2.00  
5 for each subsequent ride. Plaintiff learnt that none of the customers in a pool  
6 ride pays \$2.00. Each passenger in the pool pays full fare minus \$2.00 and  
7 Defendant use the rest of the money to enrich himself.  
8

9 38. On February 7 2018, Plaintiff received an email from Checkr indicating that  
10 Checkr had initiated another background check against the Plaintiff. Plaintiff had  
11 not approved this background check neither was he consulted before the  
12 initiation. However, Plaintiff was not concerned of the outcome because only  
13 items in the last background check were bound to come out since Plaintiff had  
14 not received any demerits on his driving record. After all, he had already driven  
15 for Uber for almost two years and maintained a 4.9 rating out of 5.0, with 1,106  
16 rides delivered by Plaintiff in 2017 alone.  
17

18 21. On February 16, 2018 Plaintiff received an email from the Defendant stating that  
19 Defendant was declining his application to drive for Uber. The only problem was  
20 that Plaintiff had been driving for Uber for two years and had not recently  
21 reapplied to drive for Uber.  
22

23 22. Plaintiff immediately requested them to reconsider. In his request, Plaintiff  
24 pointed to the fact that he has been a driver for Uber for almost two years. That  
25 he maintained an impeccable record with a rating of 4.9 out of 5. The following  
26 day, Plaintiff received an email that my account has been reactivated. By then,  
27 Plaintiff had already installed new tires in his car and he had fixed his airbag light.  
28 Plaintiff went back to the Uber office on Fort Apache and submitted the car for

1  
2 safety check. The car passed safety and Plaintiff's account was re-activated.

3 However, the following morning, Plaintiff tried to log in to drive and a message  
4 popped up stating that he does not qualify to drive for Uber. His account was  
5 deactivated.

6  
7 23. Plaintiff went to the Uber office in Henderson Nevada and was informed that that  
8 Uber had decided to discontinue the relationship. Just like that, Plaintiff was out  
9 of a job, and no severance pay was provided. In the meantime, Plaintiff is still  
10 making payments on the 2015 Kia Sorrento and not generating any income.

11 24. Wanting to have something on record on the driver's ability craft his or her own  
12 pool ride, Plaintiff also asked to Uber Support via email whether a driver can  
13 make an own pool. Plaintiff never received an answer from Defendant. Plaintiff  
14 tried to log into the driver app. to see if anything has changed. Instead, an  
15 arbitration clause popped up asking Plaintiff to accept. Plaintiff did not accept as  
16 it did not make sense for him to accept an arbitration clause from a company that  
17 had already fired him.  
18  
19  
20

21 **II. CAUSES OF ACTIONS**

22 **A. DETRIMENTAL RELIANCE**

23  
24 25. Plaintiff incorporate by reference the allegation contained in paragraph 1  
25 through 25 as if set forth verbatim herein.

26 26. Plaintiff bought the car with specific intent to drive for the Defendant. Defendant  
27 led Plaintiff to believe that he was qualified to drive when Defendant sent  
28 Plaintiff to buy a car at ABC Hydai at 6825 Redwood St, Las Vegas, NV 89118.

Plaintiff bought the 2015 Kia Sorento in reliance with Defendant's referral.

27. Defendant's action of approving Plaintiff to drive prevented Plaintiff from returning the car to Ally Finance because the purpose for which the car was obtained was approved by defendant.

28. Defendant's act of deactivating plaintiff after two years of driving resulted in immediate harm to Plaintiff at Defendant's hands because Plaintiff continues to pay for the car he bought because Defendant promised that Plaintiff could drive under Defendant's umbrella.

29. Defendant caused Plaintiff harm;

30. Defendant therefore owes Plaintiff damages for detrimental reliance.

#### **B. BREACH OF CONTRACT**

**30. Plaintiff incorporate by reference the allegation contained in paragraph 1 through 30 as if set forth verbatim herein.**

31. In April 2016, Plaintiff applied to drive for Defendant. Plaintiff underwent another background check by Defendant. Because Defendant had already declined Plaintiff's earlier application to drive for him, Plaintiff contacted Ally Finance, the bank that financed the Kia Sorento and informed them that he may have to return the vehicle because the purpose for which he had bought the car has been frustrated. When buying the car, Plaintiff had notified Hertz's car sales that he needed the car to drive for Uber. Plaintiff was asked by the Ally agent to call a toll-free number for them to come and pick up the car but was notified that it was going to affect Plaintiff's credit.

32. As Plaintiff weighed whether to call the number and ruin his credit, Checkr completed Plaintiff's second background check. This time around, Plaintiff was approved to drive for Defendant. With this approval, Plaintiff's Uber account was activated. As a result of that activation, Plaintiff decided to keep the Kia Sorento.

1  
2 33. Plaintiff drove for Uber all of 2016 and all of 2017. All that time, Plaintiff  
3 maintained a rating of 4.9 out of 5 and all that time, and Plaintiff never got a  
4 traffic ticket nor get into an accident.

5 34. On or around February 5 2018, Plaintiff took the Kia Sorento for the annual safety  
6 check at Defendant's office at 1022 W Sunset Rd Ste 2 Sunset Plaza Henderson,  
7 NV 89014. Plaintiff's vehicle did not pass safety. He was instructed to install new  
8 tires and fix the airbag light on the dashboard.

9 35. During the visit to Defendant's office in Henderson NV, Plaintiff also wanted to  
10 know whether as an independent contractor, Plaintiff can carry an Uber  
11 customer in conjunction with a Lyft customer (a pool ride) since as a drive  
12 Plaintiff only get one payment on an Uber pool ride and Plaintiff learnt that each  
13 customer in a pool ride end up paying their own fares with the driver only get  
14 \$2.00 for each subsequent customer who joins the pool which is a violation of the  
15 Uber-Driver ratio of splitting fares of 25:75 that Plaintiff was hired under.

16 36. Plaintiff also wrote this same question to Uber Support. Instead of an answer,  
17 Defendant emailed Plaintiff a bunch of agreements.

18 37. On February 7, I checked his emails and found that Checkr had again started a  
19 new background check on him. Plaintiff had not approved this background check,  
20 neither was Plaintiff consulted about this background check.

21 38. Plaintiff was not concerned of the outcome because only items in the last  
22 background check were bound to come out since Plaintiff had not received any  
23 demerits on his driving record. Furthermore, he had already driven for Uber for  
24 almost two years and maintained a 4.9 rating.

25 39. On February 16, Plaintiff received an email from Uber declining his application to  
26 drive for Uber. The only problem was that Plaintiff had been driving for Uber for  
27 two years and had not recently reapplied to drive for Uber.  
28

1  
2 40. Defendant breached its contract with Plaintiff and therefore the Court should  
3 assess damages against Defendant for that breach of contract.

4 **C. FRAUDULENCE INDUCEMENT**

5 41. Plaintiff incorporate by reference the allegation contained in paragraph 1 through  
6 4 as if set forth verbatim herein.

7 42. Defendant induced Plaintiff to apply to drive under Defendant's umbrella by  
8 promising that Plaintiff can make \$35 per hour driving under Defendant's  
9 umbrella. In reality, a driver averages \$3.75 an hour while driving under  
10 Defendant's umbrella.

11 43 Defendant's assertions that Plaintiff could make \$35 an hour was a fraud  
12 intended to induce unsuspecting Plaintiff. Plaintiff was so induced and as a result,  
13 Plaintiff has suffered damages. Defendant is solely responsible for Plaintiff's harm  
14 and therefore the Court should make Defendant Pay.

15 **D. ECONOMIC DURESS**

16 44. Plaintiff incorporate by reference the allegation contained in paragraph 1  
17 through 44 as if set forth verbatim herein.

18 45. Defendant maintain a habit of placing conditions in the app as the driver is trying  
19 to log into the app. Because the driver only tries to log into Defendant's app. when  
20 driver is about to start work, driver is forced to accept whatever Defendant require he  
21 accept in order for driver to go to work. Thus, once the driver is induced into Uber and is  
22 bound by a car note that he acquired to get into Uber, Uber starts changing rates, the  
23 percentages it pays the driver, the additional fees that are deducted from the fare  
24 before it is split between Uber and the driver. Today, there is an Uber booking fee, an  
25 Uber service fee and Split fare fees. There is also a fee for cashing in what you have  
26 already earned.  
27

28 46. This amounts to economic duress and therefore every agreement entered

1  
2 between Plaintiff and defendant through the app. should be declared null and void  
3 because it was obtained through economic duress. It is either the driver agrees, or no  
4 work. No work means a driver risk having the car repossessed and his credit ruined.

5 **E. VIOLATION OF FEDERAL MINIMUM WAGE LAW**

6 **47. Plaintiff incorporate by reference the allegation contained in paragraph 1**  
7 **through 47 as if set forth verbatim herein.**

8 The Fair Labor Standards Act Mandates that employees be paid Federal Minimum wage  
9 and receive overtime pay for overtime work done.

10 **48. Defendant is an unregulated taxi company misclassified as a technology**  
11 **company.**

12 **49. Plaintiff was a taxi driver working for Defendant and therefore Plaintiff's work**  
13 **follows the usual path of an employee of Defendant. Plaintiff was paid for each ride**  
14 **Plaintiff offered. Therefore, Plaintiff was a Piecemeal worker.**

15 **50. Defendant is an employer for the purpose of Fair Labor Standard Act. Defendant**  
16 **maintains the ability to deactivate a driver, change the amount of money a driver can**  
17 **make at Defendant's sole discretion, and Defendant maintains exclusive control of how**  
18 **much the passenger must pay, Defendant decides how much a driver can earn from a**  
19 **ride, Defendant puts whatever amount it wants in driver's account, Even the tips**  
20 **generated and meant for the driver, Defendant pays the driver what Defendant wants.**

21 **51. Defendant has divested all opportunities for Plaintiff to make money and**  
22 **therefore every money made by plaintiff comes from Defendant who makes money**  
23 **solely from taxi customers that are delivered by drivers.**

24 **52. Plaintiff relationship with Defendant is an employee-employer relationship rather**  
25 **than that of an independent contractor. Where the work done, in its essence, follows**  
26 **the usual path of an employee, putting on an 'independent contractor' label does not**  
27 **take the worker from the protection of the Act. Rutherford Food Corp. v. McComb, 331**  
28

1  
2 U.S. 722, 729, 67 S. Ct. 1473, 1476, 91 L. Ed. 1772 (1947). Plaintiff's work follows the  
3 usual path of an employee and therefore putting on an 'independent contractor' label  
4 does not take Plaintiff from the protection of the Act.

5 53. Pursuant to 49 e-CFR Part 349 Section 395.2 on-duty time means all time a driver  
6 begins work or is required to be in readiness for work until the time the driver is relieved  
7 from work an all responsibilities for performing. For an Uber driver, that should include  
8 all times when the driver log into Defendant's app. because that is when a driver clocks  
9 into duty. As a result of Defendant well calculated efforts to circumvent the DOT  
10 regulations, An Uber hour could be anywhere from one hour to three hours. A driver  
11 can drive around for more than an hour, get a ride after waiting for the hour, and make  
12 \$3.75 for that ride. To make \$35.00 per hour as Defendant advertised, that could take  
13 up to 4 hours of work. Defendant violated both the minimum wage law for both Federal  
14 and Nevada and overtime pay.

15  
16 54. In the event the Court find that there is no enough control to declare defendant  
17 an employer, the Court should find that the contractor relationship between Defendant  
18 and Plaintiff was illusory because Defendant maintained the ability to terminate the  
19 contract at Defendant's discretion as demonstrated by the fact that Defendant ended  
20 the contract with Plaintiff without provocation; deactivate Plaintiff at Defendant's sole  
21 discretion; determine how much fare is charged is charged to the customer unilaterally,  
22 and unilaterally determine how much Plaintiff will make from each ride.

23  
24 55. Once the contract is declared illusory, the only other relationship that would fall  
25 in is that of employer-employee because it would remain a fact that Plaintiff worked as  
26 a driver for Defendant. Furthermore, Defendant unilaterally has set up a minimum  
27 average rating for drivers in each city. If a driver's performance falls below the minimum  
28 after multiple notifications, driver will lose access to his or her account.

1  
2 56. Defendant has also created quality improvement courses that a driver must  
3 complete in order to regain access to his or her account. By Defendant's own policy,  
4 Defendant uses GPS technology to track every ride in what Defendant call a robust  
5 system of pre-screenings of drivers.<sup>2</sup> Uber tracks its drivers' patterns, so if drivers are  
6 constantly giving away free rides, the company will eventually notice. The most common  
7 case is riders who use the same driver on a regular basis and start to bypass the app and  
8 pay in cash. If Uber finds out, that's cause for deactivation. Defendant also maintains a  
9 dedicated incident response team on call 24/7 to investigate safety incidents.<sup>3</sup> Actions  
10 that threaten the safety of drivers and riders will be investigated and, if confirmed, lead  
11 to permanent deactivation of your account. A driver will be deactivated for using  
12 abusive language on a rider; for texting, calling, or visiting someone in person after a  
13 ride has been completed; for texting while driving; speeding or otherwise breaking local  
14 traffic laws; and using Uber to commit a crime, including drug and human trafficking or  
15 the sexual exploitation of children. Any behavior involving violence, sexual misconduct,  
16 harassment, discrimination, or illegal activity while using Uber can result in the  
17 immediate loss of your account.<sup>4</sup> Uber will also deactivate the account of any driver  
18 who receives several or serious complaints of poor, unsafe, or distracted driving while  
19 using the Uber app. All the above constitute a disciplinary action.  
20

21 57. In *Goldberg v. Whitaker House Co-op., Inc.*, the United States Supreme Court  
22 found that Members of a cooperative who performed homework and were paid on a  
23 piece-rate basis fixed by the cooperative for manufacturing items the cooperative  
24 desired, and who were subject to expulsion for substandard work or for failure to obey

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25 <sup>2</sup> UBER COMMUNITY GUIDELINES: WHY DRIVERS CAN LOSE ACCESS TO UBER - US  
26 ONLY, available at, <https://www.uber.com/legal/community-guidelines/us-en/> (last visited 4/25/18).

27 <sup>3</sup> See, Id.

28 <sup>4</sup> Id.



1  
2 regulations, were “employees” of the cooperative within the Fair Labor Standards Act.  
3 Fair Labor Standards Act of 1938, §§ 3(d, e, g), 11(d) as amended 29 U.S.C.A. §§ 203(d, e,  
4 g), 211(d). *Goldberg v. Whitaker House Co-op., Inc.*, 366 U.S. 28, 81 S. Ct. 933, 6 L. Ed. 2d  
5 100 (1961). Similarly, here, Plaintiff was a Piecemeal worker and Defendant, by its  
6 policies can subject a driver to deactivation for substandard work or failure to obey  
7 regulations, and because Plaintiff has at least on one occasion been subjected  
8 deactivation because of an iPhone left in Plaintiff’s car and was ultimately discharged.  
9 This are actions of control. Defendant should be held to Goldberg standards.  
10 Furthermore, Defendant reserves within its policies a right to expel a driver for  
11 substandard work or failure to obey regulations and therefore Defendant is an employer  
12 pursuant to Goldberg standards. Apply the economic reality test to these facts will  
13 indicate that Plaintiff was Defendant’s employee not independent contractor, for an  
14 independent contractor has rights under the law that defendant chose to reserve to  
15 himself.

16  
17 **F. SIXTH CAUSE OF ACTION FOR WILLFUL VIOLATION OF THE FEDERAL**  
18 **OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA).**

19 Plaintiff incorporate by reference the allegation contained in paragraph 1 through  
20 58 as if set forth verbatim herein.

21 59. Because Defendant-Plaintiff relationship was that of Employer-Employee, it  
22 brought Defendant within the Federal Occupational Safety and Health Act (OSHA). OSHA  
23 requires employers to provide tools and equipment that are in safe working condition to  
24 their employees. However,

25 60. Defendant required Plaintiff to provide equipment (the 2015 Kia Sorento) as well  
26 as to ensure the equipment is in good working condition.

27 61. The Defendant abdicated its duty as employer under the act.

28 62. Defendant violated OSHA and therefore Defendant should be made to pay for

1  
2 the Kia and reimburse Plaintiff for the money Plaintiff has paid on Defendant's behalf.  
3 Plaintiff also seek punitive damages for Defendant's willful violation.

4 **G. SEVENTH CAUSE OF ACTION FOR WRONGFUL TERMINATION**

5 Plaintiff incorporate by reference the allegation contained in paragraph 1 through  
6 62 as if set forth verbatim herein.

7 By referring Plaintiff to a car dealership to buy a car and hiring Plaintiff to be his driver,  
8 Defendant acted in a way that created a reasonable expectation that Plaintiff would  
9 continue to be employed as long as he abided with Defendant's policies.

10 63. Plaintiff did not violate any of Defendant's policies and therefore Defendant was  
11 wrongfully terminated. Plaintiff urges the Court to require Defendant to compensate  
12 Plaintiff for lost income caused by the wrongful termination of Plaintiff by Defendant.

13 64. Plaintiff also asks the court to grant tremble and punitive damages to Plaintiff  
14 against Defendant for this wrongful termination.

15 **H. EIGHTH CAUSE OF ACTION FOR FRAUD.**

16 Plaintiff incorporate by reference the allegation contained in paragraph 1  
17 through 64 as if set forth verbatim herein.

18 65. When determining amount that a driver gets, Defendant Uber calculates two  
19 fares for each ride — one charged to the passenger and a cheaper one used to  
20 determine the driver's pay. This has been acknowledged by Defendant's spokesperson  
21 as quoted by Los Angeles Times. According to LA Times, spokesperson "acknowledged  
22 that the calculations used to determine what passengers are charged and what drivers  
23 are paid can differ."

24 66. This goes against Uber-Driver fare percentage splits as set by Defendant at the  
25 time of Plaintiff's application.

26 67. Defendant has been defrauding Plaintiff off earned income and therefore Plaintiff  
27 urge the court to find that Defendant owes Plaintiff restitution and to award Punitive  
28

1  
2 damages against Defendant.

3 I. NINTH CAUSE OF ACTION FOR EMBEZZLEMENT

4 Plaintiff incorporate by reference the allegation contained in paragraph 1  
5 through 67 as if set forth verbatim herein.

6 68. In a scheme meant to conceal tips given to the driver via Defendant's app.,  
7 Defendant ensures that immediately after the ride, only the fare, minus the tips show  
8 up on the driver's app. Hours or days later, the tips show up on the app. In at least one  
9 occasion that Plaintiff has been able to see passenger input the tip, Passenger keyed in  
10 \$5.00 tip, but Defendant only applied a \$2 to Plaintiff's account. The tip was given by  
11 the customer to the driver and therefore Defendant was a bailee.

12 69. Defendant has been deducting drivers tips auto-collected from passengers under  
13 their rider agreement to further enrich itself.

14 70. NRS 205.300 defines the crime of embezzlement as follows: 'Any bailee of any  
15 money... who shall convert the same to his own use, with intent to steal the same or to  
16 defraud the owner or owners thereof... shall be guilty of embezzlement. \* \* \*' (Emphasis  
17 added). Livingston v. State, 84 Nev. 403, 405, 441 P.2d 681, 682 (1968).

18 71. Defendant converted Plaintiff's money with intent to defraud Plaintiff, the  
19 rightful owner and therefore Defendant is guilty of embezzlement.  
20

21  
22 **Dispositive Motion I**

23 Plaintiff incorporate by reference the allegation contained in paragraph 1 through  
24 71 as if set forth verbatim herein.

25 72. Plaintiff challenges the arbitration clause embedded in a contract that Defendant  
26 never agreed to. 9 U.S.C.A. § 2 "permits arbitration agreements to be declared  
27 unenforceable "upon such grounds as exist at law or in equity for the revocation of any  
28 contract." This saving clause permits agreements to arbitrate to be invalidated by

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2 “generally applicable contract defenses, such as fraud, duress, or unconscionability,”  
3 AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 339, 131 S. Ct. 1740, 1746, 179 L. Ed. 2d  
4 742 (2011). Here, Plaintiff challenges the arbitration clause based on contract formation  
5 theories as exist at law.

6 73. In determining the enforceability of an arbitration clause, the Court must  
7 determine whether the arbitration agreement at issue “clearly and unmistakably”  
8 evince petitioner's and respondent's intent to submit questions of arbitrability to the  
9 arbitrator? Rent-A-Ctr., W., Inc. v. Jackson, 561 U.S. 63, 80, 130 S. Ct. 2772, 2784, 177 L.  
10 Ed. 2d 403 (2010). Because Defendant declined an Plaintiff's offer to drive for him, and  
11 the arbitration clause was part of that offer (the application process), Defendant killed  
12 the arbitration clause and therefore defendant cannot take shelter in an arbitration  
13 clause that Defendant did not ascent to.

14 74. In determining the validity of an arbitration clause, the court should utilize the  
15 standards of Rent-A-Ctr. In that case, the United States Supreme Court stated that when  
16 a party raises a good-faith validity challenge to the arbitration agreement itself, that  
17 issue must be resolved before a court can say that he clearly and unmistakably intended  
18 to arbitrate that very validity question. Rent-A-Ctr., W., Inc. v. Jackson, 561 U.S. 63, 82,  
19 130 S. Ct. 2772, 2785, 177 L. Ed. 2d 403 (2010). In this case, the Court should look at the  
20 arbitration clause as part of the contract.

21 75. If the contract never matured, then even the arbitration clause never matured.  
22 For without the contract, there was no need for an arbitration clause. In this case, the  
23 arbitration clause was embedded in an application process that did not lead to  
24 formation of a contract and therefore the arbitration clause died at formation.

25 76. In that application, Plaintiff made an offer to drive for Defendant. Defendant  
26 declined Plaintiff's offer. Because Defendant was the one who declined Plaintiff's offer  
27 to drive for Defendant, and that offer included the arbitration clause, Defendant cannot  
28

1  
2 be allowed to benefit from an arbitration clause in an offer that Defendant did not  
3 accept.

4 77. Defendant cannot rely on an arbitration clause in an offer that Defendant  
5 declined to compel arbitration because that arbitration clause died with the rejection of  
6 an offer. Because Plaintiff did not accept to an arbitration clause the second time when  
7 he reapplied to drive for defendant, Plaintiff's contract with Defendant when Plaintiff  
8 was ultimately hired by Defendant is not governed by an arbitration clause.

9 78. Defendant did not require Plaintiff to accept an arbitration clause. Thus, the only  
10 arbitration clause that Plaintiff signed was that which was presented to him when he  
11 was applying to drive for Defendant the first time.

12 79. Also, because Plaintiff has raised a claim of fraudulent inducement, the fact that  
13 the agreement contract terms are so one-sided, and fraud, the same standards in Rent-  
14 A-Ctr. Should be followed. In that case, the court stated that, "if the terms of the  
15 agreement are so one-sided and the process of its making so unfair—it would  
16 contravene the existence of clear and unmistakable assent to arbitrate. *Id.* Here,  
17 Defendant is the drafter of the arbitration clause, the arbitration clause has no purpose  
18 but to shield Defendant from willful violation of laws.

19 80. Defendant has changed terms of the arbitration clause on numerous occasion  
20 since Plaintiff first applied to drive. Every time Defendant does that, Defendant deletes  
21 the old arbitration clause.

22 81. Currently, Driver's operates with a 2017 arbitration clause. This arbitration  
23 clause is also part of the application process.

24 82. That arbitration clause reads in part, "if Uber changes this Arbitration Agreement  
25 after the date you first agreed to the Terms (or to any subsequent changes to the  
26 Terms), you may reject any such change by providing Uber written notice of such  
27 rejection within 30 days of the date such change became effective, as indicated in the  
28

1  
2 "Effective" date above. This written notice must be provided either (a) by mail or hand  
3 delivery to our registered agent for service of process, c/o Uber USA, LLC (the name and  
4 current contact information for the registered agent in each state are available online  
5 here), or (b) by email from the email address associated with your Account to: change-  
6 dr@uber.com.”<sup>5</sup>

7 83. The fact that Defendant has discretion to change this arbitration clause without  
8 any consideration for the driver makes the arbitration clause illusory. Furthermore, for a  
9 person with an Uber account, like Plaintiff did, the 2017 arbitration clause is designed to  
10 deceive a driver. Once a driver gets to the opens the Sing up now page of the app, a  
11 message pops up. The message states, “By proceeding, I agree that Uber or its  
12 representative may contact me by email, phone...I have read and understand Uber  
13 Privacy Policy.” In that privacy policy, there is no arbitration clause.

14 84. The arbitration clause is buried in “Legal.” For an agreement whereby, a worker is  
15 signing off all his or her rights to judicial process, at the very least, the arbitration clause  
16 should not be buried but rather should have had a clear notice just like the Uber Privacy  
17 Policy. The Privacy Policy is also matters legal, yet, Defendant artfully displays the  
18 privacy policy so that that is what a driver will concentrate on.

19 85. Legal does not mean arbitration and since arbitration in this case means losing a  
20 lot of rights, Defendant should have clearly displayed the arbitration clause just like  
21 Defendant clearly displayed the privacy notice. Defendant did that to divert the  
22 attention of drivers from the arbitration clause.

23 86. The Court should find that the arbitration clause died at formation, that the  
24 arbitration clause was illusory, and that despite the fact that defendant’s arbitration  
25 clause takes all rights to judicial process for a driver, Defendant failed to provide proper  
26

27 <sup>5</sup> U.S. Terms of Use; Effective: December 13, 2017, available at,

28 <https://www.uber.com/legal/terms/us/> (last visited 4/26/18).

1  
2 notice like Defendant has done with the privacy notice and therefore when Driver is  
3 filling an application, a driver is not informed that he or she is giving up all rights to seek  
4 recourse in the courts.

5 87. Plaintiff pray that the Court find Plaintiff's contract with Plaintiff is not governed  
6 by an arbitration clause.

7  
8 **Dispositive Motion II**

9 Plaintiff incorporate by reference the allegation contained in paragraph 1 through  
10 87 as if set forth verbatim herein.

11 88. Plaintiff is branded Defendant's partner, hence the reference "Uberpartner". Yet,  
12 Plaintiff had no partnership rights. Even if it is to be agreed that Plaintiff was a partner,  
13 Defendant acted in a way that harmed Plaintiff by lowering fares at Defendant's  
14 discretion.

15 89. Defendant also calls Plaintiff an independent contractor. Yet, Defendant has  
16 usurped all economic opportunities for Plaintiff. Plaintiff cannot pick up a flag. Plaintiff  
17 cannot decide how much to charge for his service. In *N.L.R. B. v. Friendly Cab Co*, the  
18 Ninth Circuit Court of Appeals reached a conclusion that taxi drivers were not  
19 independent contractors, despite the fact that the drivers leased their vehicles and  
20 made their own schedules. According to the court, that conclusion was supported by  
21 substantial evidence that Friendly exercised considerable control over the means and  
22 manner of its drivers' performance and **did not provide its drivers the ability to pursue**  
23 **entrepreneurial opportunities**. *N.L.R.B. v. Friendly Cab Co.*, 512 F.3d 1090, 1093 (9th  
24 Cir. 2008).

25  
26 90. Defendant is a tax cab company that does not want to provide its drivers with  
27 vehicles to do the job.

28 91. As the U.S. Supreme Court has stated, "Where the work done, in its essence,

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2 follows the usual path of an employee, putting on an 'independent contractor' label  
3 does not take the worker from the protection of the Act." Rutherford Food Corp. v.  
4 McComb, 331 U.S. 722, 729, 67 S. Ct. 1473, 1476, 91 L. Ed. 1772 (1947).

5 92. Defendant is not a technology company because it derives all its income on for-  
6 hire driver fees.

7 93. Plaintiff was a taxi driver for Defendant.

8 94. In Association Professional Elite Taxi v Uber Systems Spain SL, 615CJ0434, the  
9 European Court of Justice found that Uber is a taxi company.

10 94. Because Defendant generates its income from fares collected by drivers like  
11 Plaintiff.

12 96. Plaintiff ask the Court to rule that Uber is a taxi company and not a technology  
13 company and that a taxi driver-taxi company relationship existed between Plaintiff and  
14 Defendant.

15  
16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for Judgement against the Defendant as follows;  
18

- 19 1. For Compensatory damages, including but not limited to, lost back pay,  
20 unpaid fringe benefits plus interest, and future lost earnings and fringe  
21 benefits;  
22 2. For Punitive damages allowed by law;  
23 3. For restitution and/or disgorgement;  
24 4. Severance pay;  
25 5. For an award of prejudgment and post-judgement interest; and  
26 6. For an award to Plaintiff of such other and further legal and equitable  
27 relief as the Court deems just and proper.

28 **DEMAND FOR TRIAL BY JURY**



1  
2 Plaintiff hereby request trial by Jury.  
3

4 RESPECTFULLY SUBMITTED this 7<sup>th</sup> Day of May, 2018.  
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6  
7 By: 

8 Peter Mwithiga

9 Pro Se.  
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